Editor's note: Reconsideration denied by order dated Jan. 15, 1971

AUGUST H. SNYDER

IBLA 70-66 Decided November 23, 1970

Homestead (Ordinary): Classification -- Homesteads (Ordinary): Land Subject To

An application for a homestead entry for land in a national forest must be rejected in the absence of any authority in the Secretary of the Interior to permit such a disposition.

1 IBLA 130

IBLA 70-66 : Oregon 4573 (Wash.)

AUGUST H. SNYDER : Homestead application rejected

: Affirmed

DECISION

August H. Snyder has appealed to the Secretary of the Interior from a decision dated May 23, 1969, of the Office of Appeals and Hearings, Bureau of Land Management, which affirmed a decision of the Bureau's Oregon state office rejecting his application for a homestead entry for the reason that the land covered by his application was not subject to homestead entry.

The application filed on February 24, 1969, describes approximately 70 acres of land within what is now the Okanogan National Forest. The appellant also filed a petition for classification of the land for homestead entry. The record shows that the land applied for was, with other land, withdrawn for national forest purposes on October 17, 1906, and has ever since remained in that status.

Although the Act of June 11, 1906, 34 Stat. 233, authorized homestead entries for lands within a national forest if they were first classified by the Secretary of Agriculture for such entry and other steps were taken (see 43 CFR 170.4 (1954)), it was repealed by section 4 of the Act of October 23, 1962, P.L. 87-869, 76 Stat. 1157. There is now no statutory provision for allowing homestead entries within a national forest. 1/ Lee C. Robinson, A-30196 (April 13, 1964).

1/ In explaining the purposes of section 4, the Secretary of Agriculture said:

The Forest Homestead Act was enacted in response to public demand that reserved public domain lands suitable for farming in the national forests be made available for homesteading. In response to the act, the national forests were systematically examined, largely from 1906 to 1919, and lands having possibilities for agricultural use so classified and listed. Some 21,000 tracts covering 2 million

Appellant states that if the Forest Service employees had been more helpful in 1953, when he first made inquiries about making a homestead entry, he would long since have completed his entry. Be that as it may (and there is no evidence other than appellant's assertion that he was misled), the Secretary can dispose of public land only in accordance with the law. The Secretary has no authority to permit a homestead entry of land within a national forest.

As the Office of Appeals and Hearings pointed out, the Secretary cannot revoke or modify withdrawals of land in a national forest without the approval or concurrence of the Secretary of Agriculture. No assent has been granted in this matter. Solicitor's Opinion, 70 I.D. 429 (1963).

Accordingly, the petition for classification and the application for homestead entry were properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM

Fn. Cont.
acres were listed. Some listed lands subsequently were found clearly not suited to agriculture and were withdrawn, but the majority were entered and patented. During the same period, areas embracing over 29 million acres were eliminated from the national forests, thus making the public lands within their areas available for entry under other appropriate laws if suitable. There now remain no lands listed for homestead entry in the national forests, except a small acreage in Alaska which have remained unentered for years.

Lands listable under the June 11, 1906, act criteria have been made available and patented. The Forest Homestead Act has served its purpose and its continuance is unnecessary. Its continued existence, however, leads to occasional demands for classification of lands by people who desire to obtain national forest lands for private use. These requests must be investigated in detail, with consequent cost in time and money. Repeal of the law, therefore, is recommended. H.R. Rep. No. 2377, 87th Cong., 2d Sess. 5 (1962).

13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is, for the reasons stated herein, affirmed.

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Martin Ritvo, Member

I concur: I concur:

_____ _____
Newton Frishberg, Chairman Francis Mayhue, Member